

In the United States Court of Federal Claims

ERNEST C. ALDRIDGE

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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Case No. 05-196

Filed: June 10, 2005

Senior Judge Smith

ORDER

Defendant has filed a Motion to Dismiss pursuant to United States Court of Federal Claims Rule (RCFC) 12(b)(1), arguing that this Court does not have subject-matter jurisdiction. In response, Plaintiff filed a Motion for Summary Judgment pursuant to RCFC 56(c). Defendant filed a Motion to stay its response to Plaintiff’s motion pending the outcome of its Motion to Dismiss. The Court subsequently granted Defendant’s Motion to Stay. In his complaint, Plaintiff makes three substantive claims under the Tucker Act, a tort claim, a contracts claim,¹ and a constitutional claim. Plaintiff alleges that he was denied access to the Federal District Court building in Reno, Nevada and that he was “substantially injured in rights.” (Pl. Aff. ¶ 5). Because the Court finds that it lacks subject-matter jurisdiction, Defendant’s Motion to Dismiss is GRANTED and it is not necessary for the Court to address Plaintiff’s Motion for Summary Judgment.

The Tucker Act explicitly grants this Court the power to adjudicate “any claim against the United States ... in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). With only limited exceptions not implicated here, the Tucker Act confers jurisdiction upon this Court where the plaintiff identifies an accompanying substantive claim that “can fairly be interpreted as mandating compensation by

¹ In paragraphs 3 and 4 of his complaint, Plaintiff asserts that his claim is one in contract, and waives any further argument in tort. Plaintiff seems to be designating the Government’s denial of his tort claim in a previous case, as establishing a contract. *See Aldridge v. United States*, No. 04-1793C (Fed. Cl. 2005). Despite this designation, the Plaintiff’s argument sounds in tort, as it involves an allegation of “injuries sustained by [P]laintiff at the hands of an employee of the United States.” (Pl. Compl. ¶ 5)

the Federal Government for the damages sustained.” *United States. v. Mitchell*, 463 U.S. 206, 216 (1983), quoting *United States v. Testan*, 424 U.S. 392, 400 (1976). In the case at hand, Plaintiff invokes the Tucker Act. The Tucker Act, however, does not create a cause of action. A plaintiff must identify a money-mandating statute which is “reasonably amenable to the reading that it mandates a right of recovery in damages.” *Fisher v. United States*, 402 F.3d 1167, 1174 (Fed. Cir. 2005) (quoting *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003)). Plaintiff invokes 28 U.S.C. § 2672 (2000) and 28 U.S.C. § 2517 (1996) as sources of recovering damages. Neither statute is “money-mandating” but rather both are procedural statutes. Section 2672 is a tort claim procedural statute. Because the Tucker Act excludes tort claims from being brought here, the statute is inapplicable. Section 2517 does not provide recovery of damages, instead, it mandates how final judgments are to be paid to a successful claimant. Plaintiff has not demonstrated that he has obtained final judgment in this Court, and therefore this statute is also inapplicable. Lastly Plaintiff claims his rights were violated under the Ninth Amendment. The Ninth Amendment is not a money-mandating provision. *See Royce v. United States*, 1 Cl. Ct. 225, 226 (1982) (holding that neither the Fourth nor the Ninth Amendments form the basis for jurisdiction). Accordingly, the Court does not have jurisdiction to hear Plaintiff’s Ninth Amendment claims under the Tucker At.

Therefore, because the Court finds that Plaintiff has failed to identify an underlying violation of either a money-mandating Federal statute or Constitutional provision that provides jurisdictional support, the case must be dismissed for lack of subject-matter jurisdiction. The Court hereby GRANTS Defendant’s Motion to Dismiss and directs the Clerk to DISMISS WITHOUT PREJUDICE Plaintiff’s complaint. Because the Court does not have subject-matter jurisdiction over Plaintiff’s complaint the Court need not address Plaintiff’s Motion for Summary Judgment.

It is so ORDERED.

LOREN A. SMITH

Senior Judge